

Virginia Administrative Code

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CHAPTER 440

RULES AND REGULATIONS FOR ENFORCEMENT OF THE VIRGINIA PEST LAW - COTTON BOLL WEEVIL QUARANTINE

2VAC5-440-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Authorized inspector" means any person employed by a state or federal regulatory plant pest agency and trained to inspect for and identify boll weevil in any living stage.

"Board" means the Board of the Virginia Department of Agriculture and Consumer Services.

"Boll weevil" means the live insect, "*Anthonomus grandis grandis*" Boheman, in any stage of development.

"Boll Weevil Eradication and Exclusion Program" means the program conducted by the Virginia Department of Agriculture and Consumer Services and the Southeastern Boll Weevil Eradication Foundation, Inc., to eradicate the boll weevil and subsequently prevent its reintroduction into areas where it has been eradicated.

"Certificate" means a document issued or authorized by an inspector to be issued under this chapter to allow the movement of regulated articles to any destination.

"Commissioner" means the Commissioner of the Virginia Department of Agriculture and Consumer Services or his designee.

"Compliance agreement" means a written agreement between a grower, dealer, or mover of regulated articles, and the Virginia Department of Agriculture and Consumer Services, United States Department of Agriculture, or both, wherein the former agrees to comply with the requirements of the compliance

agreement.

"Cotton" means parts and products of plants of the genus "Gossypium," before processing.

"Cottonseed" means cottonseed from which the lint has been removed.

"Department" means the Virginia Department of Agriculture and Consumer Services.

"FSA" means the United States Department of Agriculture, Farm Service Agency.

"Gin trash" means all of the material produced during the cleaning and ginning of seed cotton, bollies, or snapped cotton, except for the lint, cottonseed, and gin waste.

"Grower" means a farm operator or producer, whether the owner of the land or not.

"Infestation" means the presence of the boll weevil, or the existence of circumstances that make it reasonable to believe that boll weevil is present.

"Inspector" means any employee of the Virginia Department of Agriculture and Consumer Services, or other person authorized by the commissioner to enforce the provisions of the quarantine and regulations.

"Limited permit" means a document issued by an inspector to allow the movement of noncertifiable regulated articles to a specified destination for limited handling, use, processing, or treatment.

"Lint" means all forms of raw ginned cotton, either baled or unbaled, except linters and waste.

"Moved (movement, move)" means shipped; offered for shipment to a common carrier; received for transportation or transported by a common carrier; or carried, transported, moved, or allowed to be moved by any means.

"Person" means any individual, corporation, company, society, or association or other organized group.

"Regulated area" means any state or country in which the boll weevil is known to exist or areas where circumstances make it reasonable to believe that the boll weevil is present.

"Scientific permit" means a document issued by the Virginia Department of Agriculture and Consumer Services to authorize movement of regulated articles to a specified destination for scientific purposes.

"Seed cotton" means cotton as it comes from the field prior to ginning.

"Used cotton harvesting equipment" means equipment previously used to harvest, strip, transport or destroy cotton.

Statutory Authority

§ 3.2-703 of the Code of Virginia.

Historical Notes

Derived from VR115-04-14 § 1, eff. May 15, 1986; amended, Virginia Register Volume 3, Issue 6, eff. January 22, 1987; Volume 20, Issue 12, eff. March 25, 2004.

2VAC5-440-20. Notice of quarantine.

Under the authority of Article 1 (§ 3.2-700 et seq.) of Chapter 7 of Title 3.2 of the Code of Virginia, a quarantine of the Commonwealth of Virginia and all cotton producing states and countries infested with the boll weevil is hereby established to control, eradicate, and prevent the spread or reintroduction of the cotton boll weevil, "*Anthonomus grandis grandis*" Boheman.

Statutory Authority

§ 3.2-703 of the Code of Virginia.

Historical Notes

Derived from VR115-04-14 § 2, eff. May 15, 1986; amended, Virginia Register Volume 3, Issue 6, eff. January 22, 1987; Volume 20, Issue 12, eff. March 25, 2004; Volume 25, Issue 11, eff. March 4, 2009; Errata, 25:13 VA.R. 2566 March 2, 2009.

2VAC5-440-30. Regulated articles.

The following shall not be moved from any regulated area into Virginia, in any manner or method, except in compliance with the conditions prescribed in this chapter:

1. The boll weevil, "*Anthonomus grandis grandis*" Boheman, in any living state of development.
2. Seed cotton.

3. Gin trash.

4. Used cotton harvesting equipment.

5. Any other products, articles, or means of conveyance of any kind not covered by subdivisions 1 through 4 of this section, when it is determined by an inspector that they present a hazard of spread of the boll weevil and the person in possession is notified.

Statutory Authority

§ 3.2-703 of the Code of Virginia.

Historical Notes

Derived from VR115-04-14 § 3, eff. May 15, 1986; amended, Virginia Register Volume 3, Issue 6, eff. January 22, 1987; Volume 20, Issue 12, eff. March 25, 2004.

2VAC5-440-40. Requirements for program participation.

A. All cotton farm operators in Virginia are hereby required to participate in the eradication/exclusion program. Participation shall include timely reporting of acreage and field locations, compliance with regulations, and payment of fees. Farm operators within the Commonwealth shall be notified through either the extension offices, the department, FSA, or newspapers of their program costs on a per acre basis on or before April 1 of each year. The following procedures are required for participation in the program:

1. Completing a Cotton Acreage Reporting Form at the FSA office by July 1 of the current growing season for which participation is required. At this time the farm operator shall pay a nonrefundable fee in an amount sufficient to cover estimated program costs as determined by the commissioner. The commissioner shall set this fee following consultation with state, federal, and private organizations responsible for implementation and funding of boll weevil eradication/exclusion programs conducted in the Commonwealth. Such fee shall be based upon prior year's expenses and projected cotton acreage for the current growing season. Those farm operators not reporting their acreage by July 1 will not be considered as program participants and will be subject to a

penalty.

2. All fees shall be paid by the farm operator. Fees shall be made payable to Treasurer of Virginia and collected by FSA.

3. Noncommercial cotton shall not be planted in Virginia unless the grower applies for and receives an exemption to grow cotton. Applications, in writing, shall be made to the Program Manager, Office of Plant and Pest Services, 1100 Bank Street, Room 703, Richmond, VA 23219, stating the conditions under which the grower requests such exemption. The decision whether all or part of these requirements shall be exempted shall be based on the following:

- a. Location of growing area;
- b. Size of growing area;
- c. Pest conditions in the growing area;
- d. Accessibility of growing area;
- e. Any stipulations set forth in a compliance agreement between the individual and the Department of Agriculture and Consumer Services that are necessary for the effectuation of the program.

B. Farm operators whose FSA measured acreage exceeds the grower reported acreage by more than 10%, shall be assessed an additional \$5.00 per acre on that acreage in excess of the reported acreage.

C. A farm operator may apply for a waiver requesting delayed payment under conditions of financial hardship. Any farm operator applying for a waiver shall make application in writing to the Program Manager, Office of Plant and Pest Services, 1100 Bank Street, Richmond, VA 23219. This request must be accompanied by a financial statement from a state or federally chartered bank or lending agency supporting such request. The decision of whether to waive all or part of these additional assessments or payment dates shall be made by the program manager and notification given to the farm operator within two weeks after receipt of such application. The decision shall be based on the following: (i) meteorological conditions, (ii) economic conditions, and (iii) any other uncontrollable destructive forces. If

a waiver is granted, payment shall be due at the time the cotton is sold, or by December 1, whichever is sooner.

D. Failure to pay all fees on or before July 1 will result in a penalty of \$5.00 per acre. Failure by a farm operator to pay all program costs by August 1 shall be a violation of The Virginia Cotton Boll Weevil Quarantine. If such farm operator fails to comply with these regulations, the Commissioner of Agriculture and Consumer Services, through his duly authorized agents, may proceed to trap all cotton acreage found in violation and initiate actions to recover all trapping program costs through established policies and procedures identified in the Virginia Debt Collection Act (§ 2.2-4800 et seq. of the Code of Virginia).

E. Acreage subject to emergency or hardship conditions after all the growers' share of the program have been paid and prior to the initiation of field operations may be considered for a refund. The refund amount will be determined by the actual program cost per acre up to the time of emergency or hardship.

F. The commissioner may purchase growing cotton when he deems it in the best interest of the program. Purchase price shall be based on the FSA farm established yield for the current year.

G. If necessary to prevent boll weevil reinfestation of the Commonwealth, the farm operator, upon notification by the commissioner, shall completely destroy all cotton determined to threaten the safety of Virginia's cotton industry. If such farm operator fails to comply with these regulations, the Commissioner of Agriculture and Consumer Services, through his duly authorized agents, shall proceed to destroy such cotton and shall compute the actual costs of labor and materials used, and the farm operator shall pay to the commissioner such assessed costs. No damage shall be awarded the grower of such cotton for entering thereon and destroying any cotton when done by the order of the commissioner.

Statutory Authority

§ 3.2-703 of the Code of Virginia.

Historical Notes

Derived from VR115-04-14 § 4, eff. May 15, 1986; amended, Virginia Register Volume 3, Issue 6, eff. January 22, 1987; Volume 20, Issue 12, eff. March 25, 2004.

2VAC5-440-50. Conditions governing the issuance of certificates and permits to allow the movement of regulated articles.

A. Certificates shall be issued by an authorized inspector for movement of the regulated articles designated in 2VAC5-440-30 under any of the following conditions when:

1. In the judgment of the inspector, they have not been exposed to boll weevil in any living stage.
2. They have been examined by the inspector and found to be free of boll weevil in any living stage.
3. They have been treated to destroy boll weevil, under the observation of the inspector, according to methods selected by him from procedures known to be effective under the conditions in which applied.
4. Grown, produced, stored, or handled in such manner that, in the judgment of the inspector, no boll weevil would be transmitted.

B. Limited permit. Limited permits may be issued by an authorized inspector for the movement of noncertified regulated articles specified under 2VAC5-440-30 to specified destinations for limited handling, use, processing, or treatment, when he determines that no hazard of spread of the boll weevil exists.

C. Special permits. Special permits may be issued by the Virginia Department of Agriculture and Consumer Services to allow the movement of boll weevil in any living stage and any other regulated articles for scientific purposes, under conditions prescribed in each specific case.

D. Compliance agreement. Compliance agreements may be issued by an authorized inspector. As a condition of receiving a certificate or limited permit for the movement of regulated articles, any person engaged in purchasing, assembling, exchanging, handling, processing, utilizing, treating, or moving such article may be required to sign a compliance agreement. The agreement shall stipulate that the required safeguards against the establishment and spread of infestation will be maintained and will comply with the conditions governing the maintenance of identity, handling, and subsequent movement of such articles,

and the cleaning and treatment of means of conveyance and containers.

E. Use of certificates or permits with shipments. If a certificate or permit is required for the movement of regulated articles, the regulated articles are required to have a certificate or permit attached when offered for movement. If a certificate or permit is attached to the invoice or way-bill, and the articles are adequately described on the certificate, the attachment of a certificate or limited permit to the regulated article will not be required. Certificates or permits attached to the invoice, way-bill or other shipping document, shall be given by the carrier to the consignee at the destination of the shipment, or to an inspector when requested.

F. Assembly of articles for inspection. Persons intending to move any regulated articles shall apply for inspection as far in advance as possible. They shall safeguard the articles from infestation. The articles shall be assembled at a place and in a manner designated by the inspector to facilitate inspection.

G. Disposition of certificates and permits. In all cases, certificates and permits shall be furnished by the carrier to the consignee at the destination of the shipment.

Statutory Authority

§ 3.2-703 of the Code of Virginia.

Historical Notes

Derived from VR115-04-14 § 5, eff. May 15, 1986; amended, Virginia Register Volume 3, Issue 6, eff. January 22, 1987; Volume 20, Issue 12, eff. March 25, 2004.

2VAC5-440-60. Cancellation of certificates and permits.

Any certificate or permit which has been issued or authorized may be withdrawn by the inspector if determined that the holder has not complied with any condition for their use or with any applicable compliance agreement.

Statutory Authority

§ 3.2-703 of the Code of Virginia.

Historical Notes

Derived from VR115-04-14 § 6, eff. May 15, 1986; amended, Virginia Register Volume 3, Issue 6, eff. January 22, 1987; Volume 20, Issue 12, eff. March 25, 2004.

2VAC5-440-70. Compliance agreements; and cancellation thereof.

A. Any person engaged in the business of growing, handling, or moving regulated articles may enter into a compliance agreement to facilitate the movement of such articles under this quarantine. Compliance agreement forms may be obtained from an inspector.

B. Any compliance agreement may be cancelled by the inspector who is supervising its enforcement whenever he finds that the party covered by the agreement has failed to comply with the conditions as stated. Cancellation appeals may be taken to the commissioner in writing within seven calendar days of the cancellation.

Statutory Authority

§ 3.2-703 of the Code of Virginia.

Historical Notes

Derived from VR115-04-14 § 7, eff. May 15, 1986; amended, Virginia Register Volume 3, Issue 6, eff. January 22, 1987.

2VAC5-440-80 to 2VAC5-440-90. [Repealed]

Historical Notes

Derived from VR115-04-14 §§ 8 and 9, eff. May 15, 1986; amended, Virginia Register Volume 3, Issue 6, eff. January 22, 1987; repealed, Virginia Register Volume 20, Issue 12, eff. March 25, 2004.

2VAC5-440-100. Inspection of shipments.

Any product to be moved either within or out of the Commonwealth, which is suspected of containing the boll weevil, shall be subject to inspection. The shipment may be stopped at any time or place by an inspector. When such a product is found to threaten the spread of the boll weevil to noninfested areas, the inspector may require measures to eliminate the infestation.

Statutory Authority

§ 3.2-703 of the Code of Virginia.

Historical Notes

Derived from VR115-04-14 § 10, eff. May 15, 1986; amended, Virginia Register Volume 3, Issue 6, eff. January 22, 1987.

2VAC5-440-110. Determination of reasonableness of costs for services, products, or articles.

The commissioner, pursuant to § 3.2-711 of the Code of Virginia, may determine costs for services, products, or articles that shall be paid by the persons affected when those services, products, or articles are beyond the reasonable scope of the law.

Statutory Authority

§ 3.2-703 of the Code of Virginia.

Historical Notes

Derived from VR115-04-14 § 11, eff. May 15, 1986; amended, Virginia Register Volume 3, Issue 6, eff. January 22, 1987; Volume 25, Issue 11, eff. March 4, 2009.

FORMS (2VAC5-440)

Cotton Acreage Reporting Form (rev. 3/99).
